



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 05886-99
21 January 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] MSC, USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 14 Sep 99 w/attachments
(2) PERS-85 memo dtd 13 Dec 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing his failures of selection for promotion before the Fiscal Year (FY) 99 and 00 Line Lieutenant Commander Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade. Because of the failures of selection for promotion, he is scheduled to be involuntarily discharged on 1 March 2000.

2. The Board, consisting of Messrs. Lightle, McCulloch and Tew, reviewed Petitioner's allegations of error and injustice on 13 January 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner contends that he was considered for promotion to lieutenant commander as a line officer and that this was done without his knowing it occurred, since he had already been selected for a lateral transfer to the Medical Service Corps (MSC). He says his first notification of this situation was the Navy Personnel Command (NPC) letter dated 3 September 1999, which advised him he was to be separated for having twice failed of selection for promotion.

c. In correspondence attached as enclosure (2), the NPC office having cognizance over active duty promotions has commented to the effect that Petitioner's request to remove his failures of selection for promotion should be approved. They stated that although Petitioner had requested consideration for transfer to the MSC by the October 1997 transfer/redesignation board, "extraordinary delay in administrative processing" had resulted in the board's selections not having received Senate confirmation until July 1999, after both of Petitioner's failures of selection for promotion. They stated that the failures of selection he incurred before his MSC appointment received Senate confirmation are not valid for the purposes of separation.

CONCLUSION:


Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

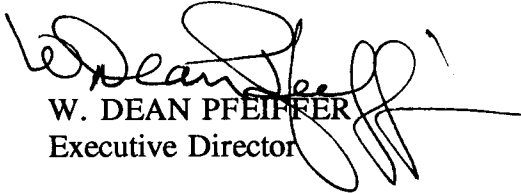
- a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.
- b. That any discharge or other action based in any way on Petitioner's failures of selection before the FY 99 and 00 Line Lieutenant Commander Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.
- c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director

5886-99



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

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Ser 85/260

13 Dec 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LT [REDACTED] MSC, USN [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned recommending approval of LT [REDACTED] request to remove his failures of selection resulting from the FY-99 and FY-00 Active Line Lieutenant Commander Promotion Selection Boards.
2. LT [REDACTED] had requested transfer to the Medical Service Corps before the October 1997 Transfer/Redesignation Board. Due to extraordinary delay in administrative processing, the board was not confirmed by the Senate until July 1999, consequently, resulting in LT [REDACTED] record being reviewed as a Line officer. Thus, [REDACTED]'s request for removal of his failures of selection has merit and should be supported. Further, as a result of his appointment as a regular officer in the Medical Service Corps on 30 July 1999, the failures that he incurred prior to Senate confirmation are not valid for the purposes of separation under 10 USC 631.
3. Recommend approval of his request.

[REDACTED]
[REDACTED]
[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancements Division